

REMARKS

I. Present Status of Claims.

Claims 1 - 51 are now pending in the present application. Claims 1, 19, 27, 30, 31, 32, 33, 44, and 49 are amended herein.

The amendments to the claims contained herein are of equivalent scope as originally filed and, thus, are not a narrowing amendment. The Examiner is respectfully requested to reconsider and withdraw the rejections and objections of the claims in view of the amendments and remarks contained herein.

II. Claims Not Addressed By the Present Non-Final Office Action.

Applicant notes that the present Office Action does not identify the status of Claims 33 - 39. Because no rejection or objection was noted in the Office Action for those claims, Applicant will therefore presume that Claims 33 - 39 have been found allowable and are therefore not specifically addressed by the Applicant in this Response.

III. Rejection of Claims 19 - 32 and 44-48 Under 35 U.S.C. § 112, Second Paragraph.

The Office Action objected to Claims 19 - 32 and 44 - 48 as being indefinite for failing to particularly point out and distinctly claimed the subject matter which applicant regards as the invention. Applicant has amended Claims 19, 27, 30, 31, 32, and 44 as noted herein as specified by the Office Action. Applicant believes the amendments to these claims overcome Office Action's rejection of Claims 19 - 32 and 44 - 48 under 35 U.S.C. § 112, Second Paragraph and therefore respectfully requests the examiner to withdraw that rejection of those claims.

IV. Rejection of Claims 1 - 13, 19 - 32, and 44 - 51 Under 35 U.S.C. § 102.

Applicant notes that the Office Action rejects Claims 1 - 13, 19 - 32, and 44 - 51 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,211,281 issued to *Almes*.

Applicant respectfully traverses the Examiner's rejection of those Claims under 35 U.S.C. § 102. Specifically, Applicant believes the Examiner has not established a *prima facie* case of anticipation as required under 35 U.S.C. § 102(b) in accordance with the Manual of Patent Examining Procedure ("MPEP"). The MPEP states,

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987).

MPEP § 2131.

First, it is noted that the claims of the present application expressly call for a device capable of rotating articles. For example, Claim 1 calls for a device "... wherein an article moving on an article rotating apparatus is rotated around the article's generally vertical axis ...". This same rotating requirement is contained in at least each and every independent Claim 1, 33, and 49 of the present application.

Therefore, *Almes* does not expressly or inherently disclose or suggest a device having the capability of rotating any of the articles that are being transported on the conveying device as expressly required by Claims 1, 33, and 49 of the present application. Because *Almes* fails to suggest or disclose all of the elements of independent Claims 1, 33, and 49 of the present application, Applicant respectfully contends that the Examiner has failed to establish a *prima facie* case of anticipation sufficient to support the rejection of independent Claims 1, 33, or 49. Because a

dependant claim cannot be anticipated if the independent claim from which it depends is not anticipated, all other dependant claims of the present application must also be found unanticipated because all of the dependent claims in the present application depend directly or indirectly from at least one of either independent Claim 1, 33, or 49.

Therefore, Applicant respectfully requests the examiner to withdraw that rejection of those claims.

Additionally, it should also be noted that the *Almes* invention does not rotate any articles placed upon the conveyor. Instead, the *Almes* device comprises set of individually operable conveyors that can be either stopped or started individually for the sole purpose of establishing a certain distance between the articles being transferred by the conveyor. This specific purpose is identified in the following excerpt from the *Almes* section OBJECTS OF THE INVENTION:

"Another object of the invention is to provide a roller conveyor wherein the accumulation of excessive quantities of discrete commodities is prevented in a novel and improved way." *Almes* at col. 1, lines 62-65 (emphasis added).

"A further object of the invention is to provide a conveyor which can automatically interrupt the transport of commodities when the path for such commodities begins to become crowded, and which can automatically restart the transport of discrete commodities when the restarted commodities are not likely to abut and/or otherwise adversely affect each other." *Almes* at col. 1, lines 62-65 (emphasis added).

Additional analysis of the *Almes* disclosure reveals that there is no evidence of any device, control, process, or operation that the *Almes* device, singly or in a group, has any capability of rotating any object being transferred on the *Almes* conveyor modules. This is in direct contrast to the present application where even the title of the invention, NON-CONTACT ARTICLE ROTATING APPARATUS expressly calls for a device that is capable of rotating articles. Additionally, the SUMMARY OF THE

INVENTION for the present application states, "The present invention comprises an [sic] non-contact article rotating apparatus and process that selectively rotates articles without impact or contact with their fronts or sides." (U.S. Patent Publication Number 2007/0074954, page 1, paragraph [0012]). Thus, although Applicant is not specifically making a non-analogous art argument, it is respectfully noted that the *Almes* invention has at best a tangential relationship to the invention of the present application.

V. Rejection of Claims 1 – 13, 19 – 32, and 44 - 51 Under 35 U.S.C. § 102.

Applicant notes that the Office Action rejects Claims 1 – 13, 19 – 32, and 44 – 51 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,659,264 issued to *Pelka*. Applicant respectfully disagrees with the Office Action for the following reasons.

The *Pelka* device includes conveyor rolling elements that are generally conical in shape where one end of the conveyor roller has a larger diameter than the other end of the conveyor roller. This difference results in the circumference at one end of the roller being greater than the other end of the roller. In operation, this difference in roller circumference acts to relocate the article being transported on the conveyor from the center of the conveyor to the side rail of the conveyor. This changes the distribution of the articles on the conveyor from being random and side-by-side into a line of articles where one article being conveyed is directly in front of the following article being conveyed. While the action of the conical shape of the rollers can sometimes result in the partial relocation of an article on the conveyor, it is certain that not every article can be rotated, and, that when rotation of an article does occur, it is a purely unintentional result.

Referring now to the claims of the present application, please note that independent Claims 1, 33, and 49 have been amended herein to expressly call for pluralities of “generally constant diameter cylindrical individual rotating transporting components.” (emphasis added to identify added text.) This addition to those independent claims now expressly calls for at least one element that is not expressly or inherently disclosed or suggested by *Pelka*. Therefore, there is at least one element in each of the independent Claims 1, 33, and 49 of the present application that are not found in *Pelka*.

Applicant therefore respectfully contends that the Examiner cannot sustain a *prima facie* case of anticipation under 35 U.S.C. § 102 for either the independent or the dependent claims of the present application and Applicant respectfully requests the examiner to withdraw that rejection of those claims.

As was the case in *Almes*, *Pelka* patent does not disclose a device capable of fully rotating an article being transported on a conveying system. As noted in the title of *Pelka*, the disclosed device is an “unscrambling” device. Also, the SUMMARY OF THE INVENTION section of *Pelka* states, “Accordingly, the present invention advances an unscrambling and aligning conveyor having an input end which receives articles from an input conveyor in random order and alignment, and an opposing discharge end from which singulated, unscrambled articles are discharged.” Therefore, although Applicant is once again not specifically making a non-analogous art argument, it is noted that the *Pelka* device does not disclose an article rotating device, but an unscrambling device.

VI. Objection to Claims 14 – 18 and 40 – 43.

Applicant notes that the Office Action objects to Claims 14 – 18 and 40 - 43 as being dependent upon a rejected base claim, but would find those claims allowable if the objected to claims were rewritten in independent form including all of the limitation of the rejected base claim and any intervening claims. In view of the amendments and analysis noted above, Applicant believes that the need to rewrite these claims has been set aside for the moment.

VII. Conclusion.

Claims 1 - 51 are now pending in the present application. Claims 1, 19, 27, 30, 31, 32, 33, 44, and 49 are amended herein.

It is believed that all of the stated grounds of rejections and objections have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the examiner reconsider and withdraw all presently outstanding rejections and objections.

It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the examiner believes that personal communication will expedite prosecution of this application, the examiner is invited to telephone the undersigned at (636) 519-5257.

Dated: May 22, 2009

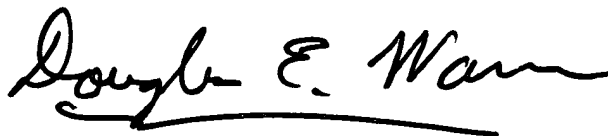
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